

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: GADOLINIUM BASED
CONTRAST AGENTS
PRODUCTS
LIABILITY LITIGATION

Case No. 1:08 GD 50000

MDL No. 1909

Judge Dan Aaron Polster

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Herbert Dean
Plaintiff

v.

**Bayer Corporation; and Bayer
Healthcare Pharmaceuticals**
Defendants

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Case No. 1:09-gd-50071

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**Amenia Butler, Individually and as
Representative of the Estate of Scotty
Johnson, Deceased**
Plaintiff

v.

**Bayer Corporation; and Bayer
Healthcare Pharmaceuticals**
Defendants

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Case No. 1:09-gd-50069

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PLAINTIFFS' MOTION FOR TRIAL SETTING AND REQEUST FOR JURY TRIAL

Plaintiffs respectfully request this honorable court for a trial setting, as authorized by Federal Rule of Civil Procedure 40, and a trial by jury, as authorized by Federal Rule of Civil Procedure 38(b).

A. Introduction

1. Plaintiffs are Herbert Dean and Amenia Butler, Individually and as Representative of the Estate of Scotty Johnson, Deceased. Defendants are Bayer Corporation and Bayer Healthcare Pharmaceuticals.

2. Plaintiffs sued Defendants for strict liability, negligence, breach of warranty and malicious conduct as a direct and proximate result of the actions of Defendants and of the ingestion by Plaintiffs of Defendants' contrast agent.

3. Plaintiffs have not previously requested a trial setting.

4. Plaintiffs respectfully request the court to grant their request for a jury trial.

B. Argument

5. The court may grant a motion requesting a jury trial on any issue for which a jury might have been demanded. Fed. R. Civ. P. 39(b). The court should grant Plaintiffs' request for a jury trial for the following reasons:

- a. Plaintiffs are among numerous cases filed in MDL 1909 which are currently pending before this honorable court;
- b. No prior trial settings have been requested against Bayer Corporation or Bayer Healthcare Pharmaceuticals;
- c. Previous settlement discussions have been unfruitful; and
- d. Plaintiffs are entitled to a jury trial under Fed. R. Civ. P. 38.

6. Plaintiffs respectfully request the court to grant their request for a jury trial in the fall of 2010 or, in the alternative, order a discovery deadline so these cases can be remanded to the trial court.

C. Conclusion

7. Plaintiffs respectfully request this honorable court to set the above-referenced cases for trial by jury. Plaintiffs are among a number of cases currently pending before this

court, no prior trial settings have been requested and parties have been unable to reach an agreement regarding settlement. For these reasons, Plaintiffs respectfully request that the Court set the above-referenced cases for trial in the fall of 2010 or, in the alternative order a discovery deadline so these cases can be remanded to the trial court.

Respectfully submitted,

MATTHEWS & ASSOCIATES

By: /s/ David P. Matthews
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed electronically on November 2, 2009. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. A courtesy copy of this document has been served electronically upon defense liaison counsel.

/s/ David P. Matthews
David P. Matthews